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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,761	10/17/2007	Martin Schweizer	7865-304 MIS	2241

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SIM & MCBURNEY
330 UNIVERSITY AVENUE
6TH FLOOR
TORONTO, ON M5G 1R7
CANADA

EXAMINER	
SAYALA, CHHAYA D	

ART UNIT	PAPER NUMBER
1781	

NOTIFICATION DATE	DELIVERY MODE
04/06/2012	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailsim@sim-mcburney.com
mailroom@sim-mcburney.com

Response to Arguments

Applicant's arguments filed 3/19/2012 have been fully considered but they are not persuasive.

This is in response to a Final Office action. The MPEP at Section 714.12 states: Once a final rejection that is not premature has been entered in an application, applicant or patent owner no longer has any right to unrestricted further prosecution. This does not mean that no further amendment or argument will be considered. Any amendment that will place the application either in condition for allowance or in better form for appeal may be entered. The MPEP also states at Section 714.13: The refusal to enter the proposed amendment should not be arbitrary. The proposed amendment should be given sufficient consideration to determine whether the claims are in condition for allowance and/or whether the issues on appeal are simplified. In the instant case, the amendment filed 3/19/2012 does not place the claims either in condition for allowance nor does it simplify issues for purposes of appeal and therefore, it has not been entered. The amendment does not place the application in condition for allowance or in a better form for appeal for the following reasons:

Page 13 of the applied WO patent states that "[T]he PMM may be used in the wet form of may be dried". Since the claims have now been amended to recite only the embodiment wherein the protein is dry, there is a need for further search and reconsideration.

Next, applicant has amended claim 38 and changed the scope of claim 37, which also requires further consideration and search because while the anticipatory reference

may or may not apply, the amended claims require further consideration based on the dry protein and the narrower embodiment now claimed.

With regard to the rejection of the claims over WO 02/089597, applicant states thus:

"WO 02/089,597 describes the production of a canola protein isolate by a procedure which involves extracting canola protein from canola oil seed meal, separating the resulting aqueous canola protein solution from the residual oil seed meal concentrating the separated aqueous canola protein solution to a concentration of at least about 200 g/L, adding the concentrated protein solution to chilled water having a temperature below about 15°C to form protein micelles, which are settled to provide a protein micellar mass (PMM). The PMM is separated from supernatant and dried (see e.g. the Abstract). As the Examiner correctly observes, the reference does not provide any protein profile analysis of the PMM. The canola protein isolate that is defined in claim 38 is formed by a similar process to that of WO 02/089,597, except that the steps of micelle formation and collecting are not carried out, **but rather the concentrated canola protein solution is directly dried to provide the canola protein isolate having the recited protein profile.**" (emphasis added).

As best understood, applicant appears to substantiate the Examiner's position that the protein of the WO 02 patent is indeed the same. Applicant is respectfully urged to consider the fact that whether the protein profile has been established or not, the feed would still contain the same 2S, 7S and 12S proteins. No unobvious result from feeding variations of the same three proteins has been made of record. The burden was shifted

to applicant to establish that the feed or protein was not the same. Applicant's response cannot be adopted as a reason for allowance, as stated.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Sayala, Ph.D. whose telephone number is (571) 272-1405. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Tarazano, Ph.D. can be reached on (571) 272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. SAYALA/
Primary Examiner, Art Unit 1781